



MINUTES

**CITY OF SCOTTSDALE FIRE LOCAL BOARD OF THE
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)
REGULAR MEETING
10:00 a.m., Thursday, February 16, 2012
Human Resources Verde Conference Room
7575 E. Main Street
Scottsdale, Arizona 85251**

PRESENT: Jack Cross, Chairman/Mayoral Designee
Jeffrey Burg, Citizen Member (arrived at 10:18 a.m.)
Todd Cavern, Elected Member
Velicia McMillan, Citizen Member/Merit Head
Steve Springborn, Elected Member

STAFF: Colleen Barraza
Ken Nemec
Chanda Washington

OTHERS: Mike Anthony, Esq.
Hannah Auckland, Esq.
Fire Captain Robert D. Curley, Jr.
Luis Santaella, Assistant Senior City Attorney

Call to order

Chairman Cross called the meeting to order at 10:07 a.m. He stated that the first order of business was the acknowledgement of Board Member Burg's expected late arrival.

Roll call

A formal roll call confirmed the members present as stated above.

1. Review and Approval of Meeting Minutes—December 15, 2011

BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE DECEMBER 15, 2011 PSPRS FIRE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG ARRIVED LATER.

2. Induction of new Scottsdale firefighters into PSPRS.

Mr. Nemec reported that there were seven new firefighters without pre-existing conditions to induct into the PSPRS with an effective date of February 27, 2012.

In response to Board Member Springborn's inquiry regarding the new firefighters' induction date, Chairman Cross responded that their effective PSPRS membership date was February 27, 2012.

Board Member Springborn clarified that February 27, 2012 was actually the beginning of the new firefighters' attendance at the academy rather than their graduation date.

BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE INDUCTION OF NEW SCOTTSDALE FIREFIGHTERS (ANGELA GOUGH, NICHOLAS SPATT, VINCENT TEDESCO, MICHAEL THOMPSON, KRIS ELLIOTT, JARRETT STEPHENS AND CHAD PRESLAR) INTO PSPRS EACH WITH AN EFFECTIVE DATE OF FEBRUARY 27, 2012 AND WITH PRE-EXISTING CONDITIONS, IF ANY, AS NOTED ON THE ATTACHED LISTING. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG ARRIVED LATER.

3. Discussion and Vote on the Ordinary Disability Retirement Application of Fire Captain Robert D. Curley, Jr.

Ms. Washington explained that Fire Captain Robert D. Curley, Jr. was applying for an ordinary disability retirement as a result of a seizure that occurred while on the job in May 2011.

She stated that although his physician released him to return to work, the City sent him for an IME to ensure that he was able to return to work seizure free within a five-year period after the occurrence.

Ms. Washington recalled that the IME physician could not guarantee that the Applicant could be seizure free for the next five years and recommended that he retire from his employment as a firefighter.

She elaborated that the City has decided to consider a potential medical separation for Fire Captain Robert D. Curley, Jr., noting that he has decided to move forward with an ordinary disability retirement as a result of that consideration.

Chairman Cross discussed the fact that the Applicant's physician had released him around October 2011, while the City's IME physician expressed concern that he might

present a danger to himself and other members of the Fire Department should he return to work. He invited the Board to discuss the medical documentation provided by staff.

In response to Board Member Cavner's inquiry regarding why the Applicant's condition was being treated differently today compared to the seizure reported in July of 2005 as mentioned on page 73 of the medical documentation, Ms. Washington stated that staff would have to check with the Fire Department regarding when the NFPA 1582 was adopted.

Board Member Springborn opined that the NFPA 1582 was in effect at the time the City of Scottsdale established the Fire Department. Board Member Cavner recalled that it was adopted in the late 1990s.

Chairman Cross explained that after reviewing the Applicant's medical records he found that when the seizure occurred in May of 2011 his medication levels were low and his physician felt that he would be fine as long as he stayed on the proper level of medication. He opined that there was a real problem since the City's IME physician recommended that the Applicant retire.

CLOSED PUBLIC HEARING

4. Motion to Recess into Executive Session for Discussion of the Ordinary Disability Retirement Application of Fire Captain Robert D. Curley, Jr.

Board Member Springborn requested that the Board recess into executive session in order to obtain legal counsel before questioning Fire Captain Robert D. Curley, Jr.

BOARD MEMBER SPRINGBORN MOVED TO RECESS INTO EXECUTIVE SESSION FOR DISCUSSION OF FIRE CAPTAIN ROBERT D. CURLEY, JR.'S ORDINARY DISABILITY RETIREMENT APPLICATION. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF VOTE OF FOUR (4) TO ZERO (0). BOARD MEMBER BURG ARRIVED LATER.

RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION

3. Discussion and Vote on the Ordinary Disability Retirement Application of Fire Captain Robert D. Curley, Jr. (Continued)

Chairman Cross invited the Board members to ask Fire Captain Robert D. Curley, Jr. questions about his ordinary disability retirement application. The Applicant was sworn in by Mr. Anthony for questioning by the Board.

In response to Board Member Cavner's inquiry regarding whether the Applicant had a seizure during his employment with the City of Scottsdale Fire Department in 2006, Fire Captain Curley responded yes.

Board Member Cagner inquired whether the Applicant was informed about NFPA 1582 standards when he returned to work after the 2006 seizure, noting that the Applicant was therefore accepted as he was prior to his employment with the City of Scottsdale. Fire Captain Curley recalled that his physician provided a work release at that time.

Board Member Springborn expressed concern that the hazards associated with the job may have accelerated the Applicant's condition between 2006 and today. He recalled that legal counsel informed the Board that an Applicant has the ability to apply for a different type of disability retirement should his first type of disability retirement application be denied.

In response to Board Member Springborn's inquiry regarding whether the Applicant would like the Board to table his ordinary disability application to allow him time to obtain legal counsel regarding the best type of disability retirement to apply for, Fire Captain Curley stated that he was just doing what he was told, pointing out that he did not realize that other disability retirements were available to him.

Board Member Springborn opined that there was no doubt that HR had presented the applicant with many options and recommended tabling Fire Captain Robert D. Curley, Jr.'s ordinary disability retirement application to allow him ample time to obtain legal counsel in order to choose the best type of disability retirement for his situation.

Board Member McMillan elaborated that the Applicant should explore his options based on information provided by HR and staff.

Mr. Anthony explained that it was the Applicant's burden to bring the initial medical information in support of its application to the Board so that the Board could decide whether to send the Applicant for an IME.

He stated that the Board must base its decision on the information provided by the IME physician, noting that the questions asked of the IME physician are framed by the type of application submitted.

Mr. Anthony elaborated that there was nothing in the statute precluding the Board from asking other types of questions in order to have them answered all at one time in the IME report.

In response to Mr. Nemec's inquiry regarding whether the Board was allowed to review two separate applications simultaneously rather than one after the other, Mr. Anthony advised against such an action, since the criteria for the two different applications differs and it was the Applicant's burden to decide which type of disability retirement he would like to apply for. Elements of the statute provide different definitions for the different types of disabilities in addition to the outside considerations such as taxation and credited service.

Chairman Cross suggested that having two separate IMEs if the Applicant decides to file two different types of retirement applications.

Mr. Anthony recommended that the Applicant consult with legal counsel possibly through his union if there is evidence that the disability falls within more than one type of

disability benefit. An accountant should also be consulted to review the taxation implications.

Mr. Anthony cautioned that the Board should not advise the Applicant about which type of disability retirement to apply for, noting that it does have the option of tabling the current ordinary disability retirement application to allow him time to choose the best option.

BOARD MEMBER SPRINGBORN MOVED TO TABLE THE REVIEW OF FIRE CAPTAIN ROBERT D. CURLEY, JR.'S ORDINARY DISABILITY RETIREMENT APPLICATION TO ALLOW THE APPLICANT TIME TO EXPLORE ADDITIONAL RETIREMENT OPTIONS. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

Board Member Springborn requested that in the future the Board should be allowed to review the questions and background information being sent to the IME physician on this confusing and complex case to preclude any type of direction or preset judgment.

Ms. Washington explained that the IME physician would be sent a copy of the Applicant's pre-employment physical and job description, along with Public Safety's standardized questions.

Board Member Springborn summarized that the IME physician would need to report on whether the illness existed prior to membership in the PSPRS as well as whether the illness was elevated or advanced as a result of job duties.

Mr. Anthony suggested that the required Board of Trustees' questions be submitted to the physician along with the Applicant's medical documentation and a letter of explanation from the Board outlining the specific areas they would like the doctor to address when preparing the IME report.

Board Member Springborn requested that staff ask the Fire Department to consider maintaining Fire Captain Curley's employment through the retirement application process in order to reduce the already stressful situation.

Mr. Nemec stated that although staff was not involved in those types of employment issues, they would definitely relay the Board's concerns to the HR department.

In response to Mr. Nemec's inquiry regarding what steps should be taken to regarding the application deadlines, Mr. Anthony recommended that the Applicant consent to extending the Board of Trustees application timelines while he pursues legal counsel.

Fire Captain Curley agreed to extend the application timelines in order to have more time to become better informed about his options.

BOARD MEMBER SPRINGBORN MOVED TO SUSPEND THE BOARD'S 30-DAY TIMELINE IN ORDER TO ALLOW THE APPLICANT TIME TO SEEK CONSULTATION.

Mr. Anthony confirmed that a motion was not required and suggested that staff obtain written consent from the Applicant for extending the timelines.

BOARD MEMBER SPRINGBORN WITHDREW HIS MOTION.

5. Discussion and Vote on the recently prepared PSPRS Fire Local Board 2011 Annual Report

Mr. Nemec recalled that the Board did not prepare a 2010 Annual Report, explaining that all boards and commissions must prepare an annual report for the City Clerk's Office to be submitted to the mayor and City Council.

He outlined that the annual report includes a summary of the major topics the Board addressed over the past year, the number of meetings held, the number of Board members and their service dates, as well as the number of meetings attended.

BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE PSPRS FIRE LOCAL BOARD 2011 ANNUAL REPORT AS PRESENTED, BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).

6. Discussion of changes to City Ordinance 3963 that establish meeting attendance requirements for the Board members.

Mr. Nemec explained that there was a recent seminar regarding changes to City Ordinance 3963 which establishes attendance requirements for Local Board members.

He stated that the following change was most prominent:

"In the event a member of a board or commission is unwilling or unable to serve, or if any member is absent or tardy from three consecutive meetings, or four meetings within a six month period, then the Chair shall notify the Mayor or Mayor's designee so that the consideration of removal and replacement of member may be scheduled for a City Council action."

Mr. Nemec commented that the intent of agendizing this discussion was to make the Board members aware of the new provisions. Ms. Washington pointed out that there were also changes relating to conflicts of interest as well as the fact that a board or commission member could be removed by City Council at any time with or without cause.

Chairman Cross said that some of the provisions referenced would not apply because they are superseded by State statute.

Mr. Anthony explained that the Fire Local Board was created by a State statute which specifies how the Board members are to be appointed and selected. The portions of the ordinance that conflict with the State statute would not apply. He noted that the two elected members of the Board are not appointed by City Council and could not be removed by City Council without cause. He stated that term limitations not provided for in the State statute also would not apply.

Mr. Anthony said that although the ordinance has some interesting aspects, it does not govern either the membership or attendance requirements of this Fire Local Board since it is a State created Board.

In response to Board Member Springborn's inquiry regarding whether City Council has the authority to remove a Board member with cause, Mr. Anthony explained that such an occurrence would have to be researched to see if it is also a cause listed under State statute.

Mr. Nemec inquired whether staff should review the Ordinance changes with the City Attorney's Office. Mr. Anthony stated that he would be happy to discuss his observations with the City Attorney since this is a State elected Board.

Ms. Auckland explained that A.R.S. Section 38-847 discusses how the Local Board was formed and governed by the State.

7. Report to the Board on recently Completed Transfers to Prior Service Credits

Ms. Washington explained that she provided the Board with information on the employer portion of the one that transferred out.

8. Board suggestions for upcoming agenda items

Chairman Cross confirmed that there were no suggestions for upcoming agenda items.

9. Joint Ethics Training Session for members of the City of Scottsdale Fire and Police PSPRS Local Boards. The City Attorney's Office will provide a joint training session to the PSPRS Fire and Police Local Boards and will be available to answer questions or facilitate any possible discussion related to the Ethics Code

Chairman Cross officially started the Police Local Board's meeting at 10:56 a.m., noting for the record that all Board members were present.

Mr. Santaella announced that he was the Assistant Senior City Attorney assigned to present both the Fire and Police Local Boards with the initial ethics training for Board and Commission members. He explained that as members of the Public Safety Retirement Board the Board members are appointed public officers under State law, noting that the ethics training to be presented today was geared towards the Commission training that other City Commissioners receive on an annual basis. Mr. Santaella pointed out the most applicable elements of today's ethics training include the open meeting law and conflicts of interest.

(Joint Ethics Training presentation occurred from 11:00 a.m. to 11:13 a.m.)

Mr. Anthony reminded the Boards that when considering the references to "having any interest in matters coming before the Board," these Boards are designed by statute to have at least two citizen members elected to represent the employees' viewpoints.

He explained that the term "quorum" normally relates to the majority of a body that meets being allowed to make decisions.

Mr. Anthony explained that the statute for the Fire and Police Local Boards specifies that the decisions made by the Boards must be made by the majority of the Board members, which was three members. He stated that the Boards could not make a decision if they do not have a concurrence of at least three members.

Mr. Anthony recalled that there was one Superior Court judge who had to decide whether or not quorum rules applied to a Local Board, and he decided that they do. However, this case was never taken to the Court of Appeals and none of the lawyers within this area of expertise agree with this decision.

Mr. Anthony recalled that in the past before the Local Boards were structured there were unfavorable activities done on behalf of the employees or employers which later motivated the drafting of statewide rules and procedures in addition to the forming of the Local Boards.

Discussion ensued regarding most Boards and Commissions elected by the City having a primary mandate of making recommendations to City Council.

Mr. Nemec agreed to inform the City Attorney's Office about the various elements of the ethics training that do not apply to the Fire and Police Local Boards.

ADJOURNMENT:

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 11:21 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec
PSPRS Fire Local Board Secretary

Jack Cross
PSPRS Chairman/Mayoral Designee